STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND- CASE NO: ULP-5664

THE TOWN OF WEST WARWICK

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Town of West Warwick (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed on February 24, 2003 by RI Council 94, AFSCME, AFL-CIO, Local 2045 (hereinafter "Union").

The Charge alleged:

> "The Town of West Warwick is not complying with Arbitration Award 1139-2246-82 regarding the Town did not pay employees for work in a higher classification. A copy of the award is enclosed. This issue is in regards to Deputy Department Heads".

Following the filing of the Charge, informal conferences were held on April 21, 2003 and October 1, 2003 The Board issued its Complaint on October 30, 2003. The Employer filed its Answer to the Complaint on November 6, 2003 A formal hearing on this matter was held on January 20, 2004. Upon conclusion of the hearing, the parties argued the case orally. No post-hearing briefs were submitted. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, and oral arguments.

SUMMARY of FACTS & EVIDENCE

pertinent part. ***"It is understood by the parties that the arbitration award will be in effect each time a Department Head is out of work for one full day."***

The Union presented the testimony of Deborah Tellier, the Deputy Town Clerk for the Town of West Warwick. Ms. Tellier testified that she was a 20-year employee of the Town and had been serving as Deputy Town Clerk since 2000. She testified that, in accordance with the terms of the 1984 arbitration and the 1997 Memorandum of Agreement, she has received out-of-classification pay (differential) whenever the Town Clerk, Mr. David Clayton, has been out of work from the Town Hall for one (1) full day. Ms. Tellier testified that she has received this pay whether Mr. Clayton was out sick, out on vacation, out on personal time, at in-state meetings, and out-of-state meetings. (See Union Exhibits #5 through #8)

The Union also presented the testimony of Ann Marie Petrozzi, the Deputy Tax Collector for the Town of West Warwick. Ms. Petrozzi testified that she fills in for Diane Derousi, the Tax Collector, when Ms. Derousi is not at work at the Town Hall. Ms. Petrozzi receives additional compensation (differential) when she is serving in a "higher classification' as the Tax Collector. Ms. Petrozzi testified that she has received this higher classification pay whether Ms. Derousi was out sick, out on vacation, out on personal time, at in-state meetings, and out-of-state meetings. (TR. p. 34)

The Union's last witness was Hope Carlson, the Deputy Tax Assessor. She testified that when the Tax Assessor, Raymond Beattie, is out of work for one (1) full day, she acts as the Tax Assessor and has been paid for the difference for her work in the higher classification. Ms. Carlson testified that on or about October 4, 2002, Mr. Beattie attended the Rhode Island Tax Assessor's meeting (in-state) and was out of work for one (1) full day. Ms. Carlson assumed Mr. Beattie's duties for the day and put in to be paid for the differential, but did not receive the pay. She testified that on one (1) other occasion, in either November or December 2002, Mr. Beattie was out of work for one (1) full day, on the day of the in-state Tax Assessor's meeting. She testified that she did not get paid for the differential on that day either.

POSITION OF THE PARTIES

The Union argues that the Town's unilateral termination of differential pay when a Department Head is away from work for one (1) whole day, for reasons other than vacation or sickness, is an Unfair Labor Practice because it results in a unilateral midterm change in a term or condition of employment (wages) without prior bargaining.

The Employer argues that the term "out of work for one full day" is not defined by the Memorandum of Agreement and is susceptible to different meanings, depending upon the nature of the employee's job description. The Employer further argues that the Union did not meet its evidentiary burden of proof and did not conclusively establish that Mr. Beattie was out of work for one (1) full day on the two (2) occasions to which Ms. Carlson testified. Finally, the Employer suggests that the charge, in this matter, is too late and that the Board should not be considering the same.

DISCUSSION

During the term of an existing collective bargaining agreement, an employer may not change any term or condition of employment addressed in the contract, absent consent of the Union. With respect to matters of employment not addressed in the contract, an employer's obligation for bargaining is that of good faith, and the employer may not institute a proposed change to matters not contained in the agreement, unless the employer has bargained to impasse or the union has waived its right to bargain. Milwaukee Spring Division of Illinois Coil Spring Co. 268 NLRN 601, 115 LRRM 1065 (1984 enforced sub nom., UAW Local 547 v. NLRB, 765 F.2d 175 (D.C. Cir 1985) Also see *NLRA Law & Practice*. 12.06 (3).

In this case, the Memorandum of Agreement dated September 10, 1997 incorporated the terms of the 1984 arbitration award into the parties' collective bargaining agreement. The Memorandum also stated that the arbitration award shall be interpreted the same way that is has been since the arbitration award was issued. The unrebutted testimony, in the record before the Board, established that three (3) Deputy Department Heads (Deputy Town Clerk, Deputy Tax

The Employer argues to the Board that, since there is no contractual definition for the phrase "out of work for one full day", it can and does mean different things for different departments. The Employer offers no explanation as to why there should be a different definition for the Tax Assessor's office and offered no testimony or evidence as to why or how this Department Head's position had, in fact, been historically treated any differently. The only testimony on what actually happens within the Tax Assessor's office came from Ms. Carlson, the Deputy Tax Assessor. She testified that in October 2002, the Tax Assessor was out of the office for one (1) full day, while attending the Rhode Island Tax Assessor's monthly meeting. assumed the Tax Assessor's duties that day and requested the higher classification pay, was denied. She also testified that the same thing occurred approximately one (1) or two (2) months later. She also testified that Mr. Beattie no longer remains out of the office for one (1) full day on the day of the monthly Tax Assessor's meetings, but that he returns to the Town Hall after the meetings are concluded.

The documentary evidence, in this case; specifically, Union Exhibit #4, clearly establishes that the Employer unilaterally, and without prior bargaining, made a decision to begin implementing the 1984 arbitration award in a new manner. The testimony of all three (3) Union witnesses established that they received higher classification pay when their respective Department Head was at out-of-state conferences. Both the Deputy Town Clerk and the Deputy Tax Collector have also received higher classification pay when their respective Department Heads have been physically out of their offices at the Town Hall, while attending in-state conferences. (See Union Exhibits #5 though #10) Therefore, the Employer violated R.I.G.L. 7-13 (6) and (10) when it determined that it was only going to "make the upgraded payments under the sick or vacation time criteria" and not under other circumstances, such as in-state or out-of-state conferences, as it had previously. If the Employer believes that the existence of "modern communications technology' is a good reason to change the present terms and conditions of employment, and the application of the "higher classification" pay differential, then

When the

FINDINGS OF FACT

1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.

2) The Union is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.

3) In 1984, the Union won an arbitration award pertaining to the compensation for employees working in a higher class of position. From 1984 to 1997, the Employer complied with the terms of the arbitration award.

4) In 1997, the Employer allegedly failed to comply with the award in full and, in response, the Union filed a grievance. (Union Exhibit #1) Subsequently, the grievance was resolved by the parties entering into a Memorandum of Agreement dated September 10, 1997. (Union Exhibit #3)

5) The Deputy Town Clerk has received higher classification pay when the Town Clerk has been out sick, out on vacation, out on personal time, at in-state meetings, and out-of-state meetings.

6) The Deputy Tax Collector has received higher classification pay when the Tax Collector has been out sick, out on vacation, out on personal time, at in-state meetings, and out-of-state meetings.

7) The Deputy Tax Assessor has received higher classification pay when the Tax Assessor has been out sick, out on vacation, out on personal time, and out-of-state meetings. The Deputy Tax Assessor was denied higher classification wages on two (2) occasions in 2002, when the Tax Assessor attended in-state meetings and was out of work from the Town Hall for one (1 full day.

8) In 2002, the Employer changed its interpretation of the 1984 arbitration agreement and the

CONCLUSIONS OF LAW

1) The Union has proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10).

ORDER

1) The Employer is hereby ordered to pay any "higher classification" back wages due and owing to any and all Deputy Department Heads who have assumed the duties of their respective Department Head, while the Department Head has been away from the Town Hall for one (1) full day in attendance, at either an in-state or out-of-state conference, since October 1, 2002.
2) The Employer is hereby ordered to cease and desist from failing to pay "higher classification" wages to any and all Deputy Department Heads when the Department Head is away from the Town Hall for in-state conferences, or out-of-state conferences for one (1) full day, unless and until the Employer and the Union have bargained otherwise.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member

Elizabeth Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: 6-23-04, 2004

By: _____
Robyn H. Golden, Acting Administrator

ULP-5664